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CONTENTS.

Legal Department File No. O.Spl. [illegible].

Sr. No.	S.I.No. /O.No.	Subject	Page
		Opinions under the Special Criminal Courts Ordinance 1942.	
1.	43 / 4-1-43.	Question whether the order amounts to quashing the committal order and therefore not justified by the terms of the Ordinance	1-2
2.	2006 / 18-3-43.	Secs. 4 and 5, see 25 Cases transferred to the Special Judge by name and not by virtue of Office - Question whether his successor could try the one case that was still pending	3-4

K.N.P.
10/7
5-Cs.

Office of the R.L.A.

By Government Order in the Home Department No. 5689/4, dated the 7th December 1942 issued under section 5 of the Special Criminal Courts Ordinance, 1942 (Ordinance No.II of 1942), the Government of Bombay have directed that the Special Judge for the area comprising the sessions division of Thana shall try sessions case No.0/85 of 1942 committed to the Court of Sessions, Thana, by the Resident Magistrate, First Class, Kurla. It appears that an application has been made to the High Court challenging the validity of this order. The Additional Secretary, Home Department, understand that the view that is going to be pressed before the High Court is that the order amounts to quashing the committal order and is therefore no justified by the terms of the Ordinance. The R.L.A. is requested to advise very urgently whether there is any substance in this argument.

2. Section 5 of the Special Criminal Courts Ordinance lays down inter alia that a Special Judge shall try such cases or classes of cases as the Provincial Government may by general or special order in writing direct. The term "case" includes a proceeding upon a complaint as soon as the complaint has been received by the Magistrate who takes cognizance of the offence complained of (p.179 Iyer's Law Lexicon of British India). The case would not cease to be a case merely because it has been committed by the Magistrate to the Court of Session. The Provincial Government has power to refer under section 5 any case at any of its stages to a Special Judge. Its powers in this respect are analogous to the powers of the High Court to transfer cases under section 526 of the Code of Criminal Procedure, 1898. When a case committed to a Court of Session is referred to the Special Judge under section 5 it is immaterial whether or not the order would amount

to quashing the committal order. In view of the provisions of section 26 of the Ordinance it is clear that after such reference is made to the Special Judge no Court has authority to transfer any case from the Special Judge. The argument anticipated by the Additional Secretary, Home Department has no substance.

Sd/- P.N.M.
4/1
Remembrancer of Legal Affairs.

U.R. to H.D.(Special) No. 43, dated the 4th January 1943.

K.N.P.
10/7
4-Cs.

Office of the R.L.A.

Mr. Henavar was appointed to be a Special Judge under Section 4 of the Special Criminal Courts Ordinance, 1942, for the local area comprising the Sessions Division of Thana; but the cases were transferred to him under section 5 by name and not by virtue of office. Consequently it is doubtful whether his successor Mr. Shah who has been appointed to be a Special Judge for that area could try the one case that was still pending on the file of Mr. Henavar unless it has been transferred to him for trial. Section 25A contemplates cases where more than one Special Judge have been appointed and are exercising jurisdiction at one time in a Sessions Division. There being only one Special Judge in the Sessions Division of Thana, section 25A will have no application. Consequently it appears that Government will have to transfer the case to Mr. Shah for trial by order under section 5.

2. Mr. Munsiff was appointed to be a Special Judge for the Sessions Division of Kanara. He has now proceeded on leave and Mr. Henavar has been appointed as his successor. It is presumed that the cases were transferred to Mr. Munsiff by name for trial under section 5. If so, these cases which are left undisposed of by Munsiff will also have to be transferred to Mr. Henavar by an order under section 5 of the Ordinance.

Sd/- P.N.M.
17/3
Remembrancer of Legal Affairs.

U.R. to H.D. No. 2006 , dated the 18th March 1943.

K.N.P.
10/7
4-Cs.